Mescalero Apache Telecom, Inc.'s Position Paper Relating to the Federal Communication Commission (FCC) Order on Comprehensive Universal Service Fund (USF) and Intercarrier Compensation Fund (ICC) Reform – December 2014

The FCC Transformation Order

- The FCC Transformation Order released on November 18, 2011 consists of a total of 759 pages. The Order and Further Notice of Proposed Rulemaking (FNPRM) has caused significant harm to MATI and the Tribal Members it serves who are currently receiving reliable and affordable voice and broadband services.

- Mescalero Apache Telecom, Inc. (MATI) is one (1) of only eight (8) Tribally owned incumbent telephone companies in the entire United States, and is located on the Mescalero Apache Reservation in the South Central Mountains of New Mexico.

- Prior to MATI purchasing its service area and building its network in 2001, 52% of the Mescalero Apache Tribe received no service, and 48% received only basic voice service. MATI provides services in what is considered a rural, high-cost area. MATI serves an average population density of two customers per square mile. A low population density and extended loop lengths, combined with the mountainous terrain, causes the average cost per loop for MATI to substantially exceed the national average.

- MATI has borrowed millions of dollars from the Rural Utilities Service (RUS) to construct a state of the art network capable of providing voice and broadband services to the Mescalero Apache Reservation. Nearly 100 % of the Tribe now has access to broadband service. In addition, 84% of the Tribe is eligible for Lifeline Support, compared to the national average of 21.8%. MATI undertook the risky venture of serving a historically underserved and economically disadvantaged area in order to provide the Mescalero Apache people with modern communications services, including interexchange services, advanced telecommunications and information services, thereby increasing the Tribe's access to education, commerce, government, and public services. MATI has been highly successful in changing the communications life on the Reservation. It has been a shining example of doing the right thing with USF monies, building infrastructure, and providing both basic voice and broadband services Reservation wide. Without USF programs and a loan from the RUS, the Mescalero Apache people would still be largely unserved. Unfortunately, as a result of the FCC Transformation Order MATI has gone from a high of 46 employees down to a total of 23 today (of which 3 are part time employees), in an effort to cut costs and remain a viable entity.

- The FCC Transformation Order and FNPRM, among other things, freezes the interstate traffic sensitive revenue requirement at 2011 levels, reduces interstate and terminating intrastate intercarrier compensation by 5% per year and eliminates Local Switching Support. From a practical standpoint, what this means is that MATI has no financial means to recover any future increase in certain service costs and, therefore, cannot continue to upgrade its technology to accommodate the growing broadband needs of its customers. While *this limitation translates to a revenue loss of approximately $35,000 annually*, it provides a specific disincentive for MATI to invest in modernized IP switching and transport technologies, both of which are well established and acknowledged in the FCC Order.

- The FCC also extended its limitation on corporate operations expenses recoverable from high cost loop support (HCLS) to interstate common line support (ICLS), as well. As with other FCC proposals, this limitation is placed on all companies' recovery without consideration of individual company circumstances. In MATI's case, corporate operations expenses, sometimes referred to as overhead costs, are naturally higher due to the realities of providing service and running a company on Tribal lands. These realities include:

- Requirements to hire Tribal community members, which can increase education and training costs;
- Public relation costs are higher due to the need to better inform Tribal community members about the existence of certain telecommunications programs, such as Lifeline and other universal service programs;
- Tribal areas have historically experienced higher health care costs for various reasons;
- Safeguarding Tribal Sovereignty is an expensive venture. MATI incurs significant legal, geographical, rights of way, mapping, and other costs to protect its domain;
- Board of Director costs are necessary to provide oversight at MATI. Arguably, Tribal lands are governed differently than many areas, thus necessitating the need for Board costs.

Currently, *MATI estimates this limitation will reduce its revenue by about $86,000 annually.*

- Certain actions taken in the Transformation Order require substantial new and increased regulatory reporting by most carriers. These reporting requirements include a lengthy new annual report, including submitting detailed data, for determining whether a carrier is complying with the FCC's intercarrier compensation rules. These, and other, regulatory reporting requirements cause carriers to incur new costs, while at the same time facing reduced federal support to comply with the new mandates.

- The FCC also introduced an overall cap on monthly universal service support of $250 per line ($3,000 annually). For companies at or near this cap, future investment is severely curtailed and compliance with loan covenants is placed in jeopardy.

- The FCC's Wireline Competition Bureau announced this year that the residential local rate floor will increase from $14.00 to $20.46. This rate floor must be charged to all customers or the serving carrier risks losing federal high cost support. While the FCC is planning to phase-in this increase, the fact remains that many customers will see a substantial rate increase as a result of this change.

- Even though the FCC adopted, and has spent considerable time implementing, long term support mechanisms for broadband deployment in large company areas, as well as for mobile services, it has done little in the Order to aid small Tribal ILEC company areas. Lack of long term certainty for the support of broadband capable networks in rural, high-cost areas is causing a marked decline in the investment in broadband capable networks by MATI and other similarly-situated carriers. Instead, the FCC's USF and intercarrier compensation reforms have resulted in less support, but with added obligations for all companies to provide universal broadband service.

- The FCC Transformation Order provides for a waiver process and it has been suggested that MATI simply apply for a waiver. A quick review of the Order waiver found at Section VII. G., Petitions for Waiver, will show that the waiver process offered under the Order is not a realistic option. Application for the waiver will cost MATI upwards of $250,000 in estimated fees and costs to prepare the necessary reports to request the waiver, at a time when the Order caps and restricts recovery on the corporate expenses that will be necessary to apply for the waiver. Additionally, it appears as though the waiver process will not be practical as MATI is experiencing significant financial hardships. It does not appear reasonable that MATI should have to all but bankrupt their company and spend upwards of $250,000 to apply for a waiver that provides no guarantee of a favorable outcome.

- MATI respectfully requests that the USF Order and FNPRM be stayed as it relates to MATI, or in the alternative, that a waiver be granted to MATI for those parts of the Order and FNPRM that limit reimbursement of reasonable, prudent, and necessary costs. This is especially vital in light of the opinion by the 10th Circuit Court of Appeals affirming the USF Order in all respects.